

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| In the Matter of                    | ) |                              |
|                                     | ) | Facility ID No. 71209        |
| <b>WBCE, Inc.</b>                   | ) | NAL/Acct. No. MB200641410137 |
|                                     | ) | FRN: 0012839189              |
| Former Licensee of Station WBCE(AM) | ) | File No. BR-20050222AAT      |
| Wickliffe, Kentucky                 | ) |                              |

**FORFEITURE ORDER**

**Adopted: May 29, 2009**

**Released: June 1, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000), to WBCE, Inc. (“WBCE”), former licensee<sup>1</sup> of Station WBCE(AM), Wickliffe, Kentucky (“Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”) by failing to timely file a license renewal application and engaging in unauthorized operation of the Station.<sup>2</sup>

**II. BACKGROUND**

2. On January 11, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to WBCE for these violations.<sup>3</sup> The current licensee, David Courtney (“Licensee”) filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on February 12, 2007.

3. As noted in the NAL, Licensee’s renewal application for the current WBCE(AM) license term should have been filed on April 1, 2004, four months prior to the August 1, 2004, expiration date, but was not.<sup>4</sup> On February 22, 2005, WBCE tendered the captioned license renewal application for the Station, nearly seven months after the Station’s license had expired. It failed to seek special temporary authorization (“STA”) to operate after the license expired. WBCE provided the following explanation for its untimely filing of the renewal application:

WBCE(AM) was acquired by the licensee, WBCE, Inc. via an SBA loan. The loan was thereafter assigned to and acquired by the Beal Bank. The Beal Bank accelerated the payment on the loan obligation, and WBCE, Inc. was unable

<sup>1</sup> WBCE, Inc. assigned the Station to David Courtney in 2007. See File No. BAL-20050301AAC (granted Feb. 2, 2007). The assignment was consummated on February 7, 2007.

<sup>2</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>3</sup> *WBCE, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17 (MB 2007).

<sup>4</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

to pay that amount when due. The Beal Bank foreclosed on the loan, which had been secured by the assets of WBCE, Inc. The foreclosure proceeding began prior to the time that the license renewal application was due. The President of WBCE, Inc., Mr. Jim Baggett, was under the impression that, due to the foreclosure, it was not possible to obtain a grant of license renewal for WBCE(AM), or for WBCE, Inc. to submit an application for renewal itself. There was no receivership created, however, and no bankruptcy proceeding, and the Beal Bank did not apparently undertake to obtain assignment of the license to any receiver. Nor did it (or any other entity) undertake, apparently, to file an application for renewal of the license for the station when due. The assets of WBCE, Inc. (consisting of the assets of the station) have now been sold at auction, subject to Commission consent to assignment of the license of WBCE(AM) and therefore subject also to the Commission's grant of this license renewal application. The arm's length purchaser of the assets at auction is Mr. David Courtney, an individual, residing in Paducah, KY. An application for assignment of the license of WBCE(AM) from WBCE, Inc., to Mr. Courtney is being filed contemporaneously herewith.<sup>5</sup>

On January 11, 2007, the staff advised WBCE of its apparent liability for a forfeiture of \$7,000 for its failure to timely file the Station's renewal application and for unauthorized operation of the Station.<sup>6</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that WBCE is financially insolvent and therefore unable to pay any monetary forfeiture. Licensee asserts that this reason warrants a cancellation or reduction of the assessed forfeiture.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission's *Forfeiture Policy Statement*.<sup>9</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>10</sup>

6. Licensee claims that "based on oral representations of WBCE, Inc.'s sole principal, [it believes] that WBCE, Inc. is insolvent and unable to pay any monetary forfeiture."<sup>11</sup> However, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Here, Licensee only provides us with the unsubstantiated claim that it believes that the former licensee is financially insolvent. We find this information alone is an insufficient basis on which to assess WBCE's inability to

<sup>5</sup> See Exhibit 6 of the captioned application.

<sup>6</sup> The Commission granted the above-referenced license renewal application on January 11, 2007.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> Request at 2-3.

pay.<sup>12</sup> Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

7. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that WBCE willfully<sup>13</sup> and repeatedly<sup>14</sup> violated Section 73.3539 of the Rules and Section 301 of the Act,<sup>15</sup> and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>16</sup> that WBCE, Inc., SHALL FORFEIT to the United States the sum of \$7,000 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>17</sup> Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>18</sup>

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<sup>12</sup> See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

<sup>13</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>14</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>15</sup> 47 U.S.C. § 301.

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</sup> See 47 C.F.R. § 1.1914.

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail to: WBCE, Inc. c/o Jim Baggett, 1747 Cedar Bay Road, Jacksonville, Florida 32218, and to its counsel, Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, Maryland 20904-6011.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau